IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3113 OF 2004

IN

SUIT NO.2412 OF 2004

John Peter Fernandes. .. **Plaintiff.**

v/s.

Saraswati Ramchandra Ghanate & Ors. .. **Defendents.**

Mr. Sunil Dubey i/b V.R.Tripathi, advocate for plaintiff.

Mr. S.K.Chourasia i/b A.M.Saraogi, advocate for defendants No.3 and 4.

CORAM: D.G.DESHPANDE, J.

DATE : 29TH NOVEMBER, 2004.

P.C. :-

. This motion is taken out by defendants No.3 and 4 for setting aside the order dated 30th August, 2004. According to them, it is an exparte order. At the time of passing of the order they were not on record i.e. defendant No.4 was not on record and defendant No.3 was already there. But by that order symbolic possession was to be taken by the receiver and the order was passed

to protect property as it is so that no further third party rights should be created. Defendant No.4 claims from defendant No.3 and therefore, under apprehension that the order dated 30th August, 2004 is against his interest, he has taken out this motion.

2. Suit of the plaintiff is for specific performance and the plaintiff as seen from the order dated 30th August, 2004 gave receipt for payment of Rs.10 Lakhs as a part of consideration. In view of this fact, motion of the defendants does not appear to be justified wherein nothing to adversely affect to the interest of the defendant No.4. His possession is going to be continued through the receiver. Therefore, motion disposed of. Liberty to the defendants to oppose other motion.

3. Receiver to act on the ordinary copy of the order duly authenticated.